



POLICE DEPARTMENT

March 17, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Sean Donohue
Tax Registry 932565
Midtown North Precinct
Disciplinary Case No. 83002/07

The above-named member of the Department appeared before me on December 11, 2008, charged with the following:

1. Said Police Officer Sean Donohue, assigned to Midtown Precinct North, while on sick report at approximately 0100 hours on or about September 21, 2006 was wrongfully and without just cause absent from his residence without the permission of said officer's District Surgeon and/or Health Divisions Sick Desk Supervisor.

P.G. 205-01, Page 2, Paragraph 4 - REPORTING SICK PERSONNEL
MATTERS

2. Said Police Officer Sean Donohue, assigned as indicated in specification #1, on or about the date and time as indicated in Specification #1, in the vicinity of West 57th Street, New York County, after becoming engaged in a traffic dispute whereby said officer stopped a vehicle and displayed his shield to an individual, identity known to the department, said officer failed to notify the precinct desk officer, as required.

P.G. 212-09, Page 2, Paragraph 4 - UNUSUAL OCCURRENCE REPORTS

3. Said Police Officer Sean Donohue, assigned as indicated in specification #1, while on sick report on or about September 19, 2006, having changed said officer's residence, did fail and neglect to notify his Commanding Officer by submitting form Change Of Name, Residence or Social Condition (PD 451-021), as required.

P.G. 202-18, Page 1, Paragraph 4 - RESIDENCE REQUIREMENTS GENERAL
REGULATIONS

COURTESY • PROFESSIONALISM • RESPECT

The Department was represented by Amy Avila, Esq., Department Advocate's Office, and the Respondent was represented by John P. Tynan, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found guilty.

EVIDENCE IN MITIGATION

The Respondent testified that in July, 2006, he broke his wrist while making an arrest. He was placed on line of duty injury sick leave status ("LOD sick") which continued into September, 2006. The Respondent met with the District Surgeon during the week of September 11, 2006. He told the District Surgeon that his wrist had partially healed and that he was now able to perform limited duties. The District Surgeon told him to "give it one more week." The District Surgeon continued his LOD sick status and scheduled a follow up appointment for September 21, 2006.

On September 19, 2006, the Respondent changed his residence by moving from [REDACTED]. The Respondent was aware that he was required to notify his commanding officer of this move by submitting a Change of Name, Residence or Social Condition form (PD 451-021) at his command so that the residence data on his Force Record ("ten card") (form PD 406-143) could be updated. The Respondent testified that since he anticipated that at his appointment on

September 21, 2006, the District Surgeon would take him off LOD sick and place him on limited duty status, he believed that he would be reporting for duty at his command on September 22, 2006, and that he could fill out and submit a Change of Name, Residence or Social Condition form then.

On the evening of September 20, 2006, the Respondent had a pass to be out of his residence until 8:00 p.m. so that he could attend a sergeant's test study class being given at St. Andrew's Church, Manhattan. His class started at 6:00 p.m. and ran late, ending at 9:00 p.m. Instead of returning to his residence, the Respondent drove to [REDACTED] a restaurant/bar where his girlfriend worked. He ate dinner and remained there, watching a Yankees game on TV, until 1:00 a.m. As the Respondent was driving to his girlfriend's residence, he observed that a livery cab behind his car was being driven in an erratic manner. The driver, who was switching lanes without signaling, "high beamed" the Respondent and then "cut me off." The Respondent, who had a Department parking plaque on his windshield, decided to stop the cab so that he could warn the cabbie about his dangerous driving. After he stopped the livery cab, the Respondent approached the driver and identified himself. They engaged in verbal argument which lasted less than one minute. He had no physical contact with the cab driver and the cab driver did not tell him that he was going to call the police. The Respondent got back into his vehicle and resumed driving to his girlfriend's residence. He arrived there and parked his car less than five minutes later. He was contacted by the Department the next morning.

The District Surgeon took him off sick status and placed him on limited duty status effective September 22, 2006. The Respondent has since been returned to full duty

status and he is presently performing full duty. The Respondent has been designated "cop of the month" at Midtown North Precinct "two years in a row."

On cross-examination, the Respondent testified that while he was inside [REDACTED] on the evening of September 20, 2006, he drank "one or one and a half" beers with dinner. When he was questioned about whether he had asked the cab driver to produce his driver's license, he answered that he could not recall. He admitted that he had no authority to take any police action. He did not call for assistance. He could not recall whether he drove through a red light after this incident, but he admitted that he was trying to get away from the livery cab driver. When he arrived at his girlfriend's residence at [REDACTED], he parked his car and then ran away from the car. The Respondent denied that his vehicle had been involved in a "fender bender" with the cab. The Respondent acknowledged that even though his out of residence pass had ended at 8:00 p.m., he remained at "Social" watching the Yankees game until 1:00 a.m.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on July 1, 2003. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has pleaded Guilty to being absent from his residence without the permission of his District Surgeon and/or the Sick Desk Supervisor on one occasion for about five hours. In Disciplinary Case No. 83834/08 (decision issued by the Police

Commissioner on February 10, 2009), a 15-year member who had no prior disciplinary record pleaded Guilty to being absent from her residence on a single occasion without having obtained the permission from the Sick Desk Supervisor. The Police Commissioner disapproved the trial commissioner's penalty recommendation that the member forfeit five vacation days and imposed a penalty requiring the member to forfeit 20 vacation days. In that case, as here, the member remained out of residence beyond the period allowed by her pass. However, that case differs from the present case in that the member in that case also pleaded guilty to four counts of driving from New York to New Jersey while she was out of residence on passes. In Disciplinary Case No. 81641/06 (approved on December 18, 2007), a three-year member who had no prior disciplinary record forfeited 17 vacation days after he pleaded Guilty to having left his residence while on sick leave without permission to go to his girlfriend's house. However, that case differs somewhat from the present case in that the member in that case also failed to appear at his Medical District for a scheduled visit.

The Respondent has also pleaded Guilty to having failed to notify the precinct desk officer that, after he stopped a livery cab and displayed his shield to the driver, he had engaged in a traffic dispute with the driver. In Disciplinary Case No. 81553/06 (approved on October 17, 2006), a probationary member with no prior disciplinary record forfeited ten vacation days for failing to notify the Department after he became involved in an off-duty verbal dispute with a neighbor. However, this 10-day penalty also covered the member's failure to safeguard his firearm (which he removed from his waistband and placed, unsecured, beneath the driver's seat of his personal vehicle) during the dispute.

Finally, the Respondent has also admitted that he failed to notify his commanding officer that he had changed his residence by submitting a Change of Name, Residence or Social Condition form. In Disciplinary Case No. 79141/03 (approved on February 21, 2005), a probationary member who had no prior disciplinary record forfeited five vacation days after he pleaded Guilty to having failed to notify his commanding officer that he had changed his residence address. With regard to this charge, the Respondent offered unrefuted testimony that he had changed his address only the day before this incident and that he planned to file the change form when he reported for limited duty two days later. Nonetheless, Patrol Guide Procedure No. 203-18 (3) requires that this form must be submitted "when...residence...is changed," the plain meaning of which is immediately upon change of residence.

Consistent with the penalties imposed in the aforementioned decisions, it is recommended that the Respondent be required to forfeit 20 vacation days.

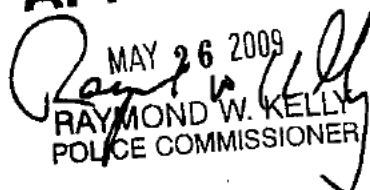
Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner - Trials

APPROVED



MAY 26 2009
RAYMOND W. KELLY
POLICE COMMISSIONER